HUDSON COOK

CFPB Bites of the Month - February 19, 2025 - CFPB, My Funny Valentine

February 28, 2025 | Justin B. Hosie, Eric L. Johnson and Kristen Yarows

In this month's article, we share some of our top "bites" for the prior months covered during the February 2025 webinar.

Bite 18: Former CFPB Director and GC Publish Article on State Enforcement

On January 15, 2025, former CFPB Director Chopra along with the CFPB's former General Counsel Seth Frotman published an article in the *Harvard Law School Journal on Legislation* addressing state agencies enforcing the Consumer Financial Protection Act ("CFPA"). The article focuses on how state agencies can use the CFPA. The article noted that all states have participated in about fifty total actions using authority under the CFPA against organizations and concerning conduct that might otherwise go unaddressed, bringing remedies that might not have been otherwise available. The article says, "Section 1042's cooperative federalism regime is arguably the most significant instance of Congress specifically empowering states to play such an important role in the enforcement of federal consumer protections, building on similar provisions in a range of prior consumer protection statutes on narrower subject matters."

Bite 16: CFPB Releases Reports on Rental Payment Data

On January 28, 2025, the CFPB announced that it purchased deidentified data maintained by a national consumer reporting company on rental housing payments, leases, inquiries, and collections. The CFPB released two reports that reviewed national rental payment data from September 2021 to November 2024. The CFPB found: (1) The fraction of renters incurring a late fee in the last twelve months, increased from 15.4% at the end of 2021 to 23% at the beginning of 2023 but declined to 14% by November 2024; (2) Around half of renters who incur a late fee return to having their rent paid on time; (3) Incurring multiple late or NSF in a twelve-month period is a frequent occurrence for those who incur such fees; (4) More than 20% of renters with at least one late fee have five or more late fees in the last 12 months; and (5) The average late fee is around $85, and the average non-sufficient funds fee is around $40.

Bite 15: CFPB Publishes Report on Auto Repossession Data

On January 23, 2025, the CFPB published a report that analyzed data from nine major auto creditors covering accounts with activity between 2018 and 2022. The report found that the rate of auto repossessions at the end of 2022 surpassed pre-pandemic levels, and creditors were increasingly more likely to use third parties to manage the repossession process. The data showed that in December 2022, 0.75% of all outstanding vehicle loans were assigned to a repossession, which was a 22.5% increase from December 2019 (0.61%). The data showed that the average repossession costs were higher when a third party was used for the repossession. The data showed that some consumers still owed money on their vehicle after it was repossessed and sold by the auto creditor. The average outstanding balance in December 2019 was more than $10,000, and in December 2022, that average balance increased to more than $11,000. In its press release, the CFPB wrote that the data showed increasing consumer risk in the auto market.

Bite 14: CFPB Publishes Report on Servicemember Auto Finance

On January 29, 2025, the CFPB published a report on servicemember auto finance, claiming that servicemembers pay higher rates over longer terms. The report analyzed more than 20 million auto transactions originated between 2018 and 2022, noting that servicemembers typically had larger transactions, made smaller down payments, and had higher monthly costs. The report claims that for new vehicles servicemembers financed on average over $2,200 more than civilians, and servicemembers financed on average almost $400 more than civilians for used vehicles. According to the CFPB, servicemembers faced average annual percentage rates (APRs) 0.6 percentage points above civilian rates and for longer terms. The report also indicated that over 70% of servicemembers purchased optional products and paid on average about $140 more for optional products than civilians. The CFPB claims that the most common and expensive category of optional products that servicemembers purchased were warranty, service, and maintenance plans. The CFPB also claims that servicemembers' purchase of GAP products increased sharply in 2020 after the Department of Defense changed its interpretation of the Military Lending Act.

Bite 13: CFPB Publishes Report on Mortgage Cash-Out Refinances

On January 24, 2025, the CFPB published a report on mortgage cash-out refinances, noting that most borrowers cited paying off other bills and debts as the most common reason for such transactions. The CFPB report reviewed how cash-out refinance mortgage borrowers between 2014 and 2021 used their funds and how other credit outcomes changed before and after the refinance event. The CFPB report indicates that cash-out borrowers had sharp improvements in their debt load and credit scores at the time of refinancing, with large drops in credit card and auto balances. Credit card balances and use rates trended back toward pre-refinance levels in the year following the refinance, but did not increase to the pre-refinance level. Similarly, credit scores decreased in the year following the refinancing but remained above pre-refinance levels. Each year, from 2014 to 2019, more than 50% of cash-out borrowers responding to the survey selected "paying off other bills or debts" as the most common reason for cash-out refinancing. The study found that cash-out borrowers often have different debt profiles than other homeowners. Credit card balances were approximately $4,000 higher among cash-out borrowers, while mean student loan balances were approximately $4,000 lower. The CFPB noted that paying non-mortgage debts with mortgage debt can increase the risk of foreclosure.

Bite 12: CFPB Issues Supervisory Highlights on Advanced Technologies

On January 17, 2025, the CFPB released its special edition supervisory highlights that discusses select examinations of institutions that use credit scoring models, including models built with advanced technology commonly marketed as AI/ML technology, when making credit decisions. The CFPB examiners reviewed credit card lenders' use of credit scoring models in the underwriting and pricing of credit card applications, including models build with AI or ML technology and found disparities in underwriting and pricing outcomes for Black and Hispanic applicants, as well as deficient compliance management systems. CFPB examiners found that auto creditors sometimes used credit scoring models that used more than a thousand input variables, including many that are considered "alternative data." Examiners identified risks associated with the use of such a large number of input variables, including whether they acted as a proxy for prohibited bases under the Equal Credit Opportunity Act ("ECOA"). CFPB examiners reported that auto originators did not sufficiently ensure compliance with adverse action notice requirements and had not validated that their processes for selecting reasons produced accurate results. The CFPB noted that there is no "advanced technology" exception to Federal consumer financial laws and institutions must comply with the laws when using advanced computational methods.

Bite 11: CFPB Takes Action Against Fintech over ATM Disclosures

On January 30, 2025, the CFPB entered into a consent order with a fintech company, alleging violations of the CFPA and Electronic Funds Transfer Act ("EFTA"). The CFPB alleged that the company engaged in deception by misrepresenting ATM withdrawal fees and failing to provide accurate disclosures. The CFPB alleged that the company led consumers to believe they would experience lower ATM fees than the company charged. According to the CFPB, thousands of consumers were overcharged approximately $156,000 in ATM fees. The CFPB alleged that the company also lacked sufficient internal policies and procedures to ensure compliance with federal remittance and prepaid account rules, leading to systemic compliance failures. The CFPB alleged that the company charged consumers more than $130,000 in excessive fees for consumers who held over 15,000 Euros in their prepaid accounts. The consent order requires the company to implement compliance measures, pay $450,000 in consumer redress, and pay a $2.025 million civil penalty.

Bite 10: CFPB Takes Action Against Student Loan Trusts

On January 16, 2025, the CFPB and student loan trusts filed a proposed stipulated judgment that require the trusts to pay $2.25 million in redress. The proposed stipulated judgment also bars the trusts from collecting on certain debt. The trusts are a group of fifteen securitization trusts that acquire, pool, and securitize student loans that they service. The CFPB filed a lawsuit in 2017 alleging that the trusts brought improper debt collection lawsuits, filed false and misleading affidavits, and attempted to collect time-barred debts after the statutes of limitations had expired. The CFPB alleged that these practices were unfair and deceptive, violating the CFPA. In March 2024, the U.S.

Court of Appeals for the Third Circuit held that the trusts were covered persons under the CFPA. The Supreme Court declined to hear the trusts' appeal.

Bite 9: CFPB Takes Action Against Mortgage Lender for Discrimination

On January 17, 2025, the CFPB filed a complaint and proposed consent order to resolve allegations that a mortgage lender violated the ECOA and Regulation B. The CFPB alleged that from 2019 through 2021, the mortgage lender engaged in unlawful discrimination against applicants and prospective applicants by redlining majority-Black and Hispanic areas. The CFPB alleged that the company's activity would discourage a reasonable person from applying for credit based on race, color, and national origin. According to the CFPB, the mortgage lender located its offices in majority-white neighborhoods and avoiding marketing to majority-Black and Hispanic neighborhoods. The CFPB alleged that these actions resulted in disproportionately low numbers of mortgage loan applications and mortgage loan originations from majority-Black and Hispanic neighborhoods in Chicago and Boston compared to other lenders. The proposed order, if approved by the court, would require the company to pay a $1.5 civil money penalty and prohibit the company from acting as a non-depository residential mortgage lender for 5 years.

Bite 8: CFPB Takes Action Against Auto Creditor over Credit Reporting

On January 17, 2025, the CFPB announced an action against an auto creditor over, claiming the company inaccurately furnished credit report information during Covid-19, violating the Fair Credit Reporting Act ("FCRA"), Regulation V, and the CFPA. The CFPB claims the company allowed consumers to defer payments during COVID-19, but reported the consumers to as delinquent instead of current. The CFPB also alleged that the company failed to timely complete indirect dispute investigations, failed to implement reasonable written policies and procedures regarding the information it furnished, and failed to conduct reasonable investigations of direct disputes. The consent order requires the company to change its practices, pay $10.3 million in consumer redress, and pay a $2.5 million civil money penalty to the CFPB.

Bite 7: CFPB Takes Action Against Consumer Reporting Agency

On January 17, 2025, the CFPB announced an action against a consumer reporting agency, alleging it failed to conduct proper investigations of consumer disputes. The CFPB issued a consent order against a nationwide consumer reporting agency for allegedly violating the FCRA and the CFPA's prohibition on unfairness. The CFPB alleged that the CRA failed to: (1) Properly reinvestigate disputed information in consumer files, (2) Prevent the improper reinsertion of previously deleted information from consumer files, and (3) Failed to block reporting of information consumers identified as resulting from identity theft. The consent order also alleged that coding errors in the company's software caused the company to miscalculate and share inaccurate credit scores. The consent order further alleged that the company reported the same credit accounts multiple times for more than 50,000 consumers. The CFPB claimed that the consumer reporting agency violated the FCRA's requirements for investigating and processing consumer disputes and assuring maximum possible accuracy of information on its consumer reports. The consent order requires the company to comply with laws and pay a $15 million civil money penalty.

Bite 6: CFPB Takes Action Against Peer-to-Peer Payment App

On January 16, 2025, the CFPB announced an action against a peer-to-peer payment app, claiming it failed to address fraud. The CFPB's consent order resolved alleged violations of the CFPA, EFTA, and Regulation E. The CFPB claimed that the Company committed unfairness in violation of the CFPA by failing to provide effective consumer service and failing to address fraud on the platform. The CFPB also claimed that the Company's terms of service led consumers to believe that disputes must be addressed by the consumer's bank and not the Company, when the EFTA required the platform to investigate disputed unauthorized transactions. The consent order requires the Company to pay refunds ranging between a minimum of $75 million up to $120 million along with other redress to consumers. The consent order also requires the company to pay a $55 million penalty and create a 24-hour, live consumer service line.

Bite 5: CFPB Director Chopra Fired

On February 1, 2025, President Trump fired then CFPB Director, Rohit Chopra. The former Director posted a goodbye letter on social media thanking President Biden for the nomination and the Senate for confirming him. He also touted the work the CFPB has done since 2021. On Monday, February 3, President Trump appointed Treasury Secretary Scott Bessent to serve as the Acting Director. That day Acting Director Bessent reportedly ordered the CFPB to stop rulemaking, communications, litigation, and other activities. He reportedly directed the CFPB: (1) Not to approve or issue any proposed or final rules or formal or informal guidance; (2) To suspend the effective dates of all final rules that have been issued or published but that have not yet become effective; (3) Not to commence, take additional investigative activities related to, or settle enforcement actions; (4) Not to issue public communications of any type, including publication of research papers; (5) Not to approve or execute any material agreements, including related to employee matters or contractors; and (6) Not to make or approve filings or appearances by the CFPB in any litigation, other than to seek a pause in proceedings.

Bite 4: Judge Issues Order Staying CFPB's Medical Debt Rule

On February 6, 2025, it was reported that the U.S. District Court for the Eastern District of Texas issued an order that stays the CFPB's Medical Debt Rule's effective date for 90 days. The plaintiffs are two trade groups, one that represent consumer reporting agencies and the other represent credit unions. The rule had a March 17th effective date but is now pushed back until June 15th. Former CFPB Director Chopra finalized the Medical Debt Rule on January 7th, which would change medical debt credit reporting and the use of medical debt information for underwriting purposes. The February 6th order also issued a 90-day stay of all deadlines in the ongoing case.

Bite 3: Other Significant Changes at CFPB

On February 7, 2025, Elon Musk posted on X: "CFPB RIP" with a headstone. Department of Government Efficiency ("DOGE") employees later reportedly gained access to CFPB's building and information systems. Then, on February 8, 2025, President Trump designated Russell Vought as Acting Director of the CFPB. Mr. Vought was recently confirmed as Director of the Office of Management and Budget. The CFPB home page changed to deliver a "404: Page not found," but otherwise still appears to work.

Bite 2: CFPB Instructs Employees to "Stand Down" and Stop Work

On February 8, 2025, the CFPB's Acting Director reportedly instructed employees via email not to issue any proposed or formal rules, stop pending investigations and not open new investigations, halt all stakeholder engagements, abstain from issuing public communications, not make court filings other than to seek a pause, and added supervision to the freeze. Also, the Acting Director posted to X that that the CFPB will "not be taking its next draw of unappropriated funding because it is not 'reasonably necessary' to carry out its duties" and that the CFPB had an "excessive" balance of $711.6 million. CFPB employees were also reportedly instructed to stay away from the CFPB's headquarters for a week. The CFPB also rescinded job offers and terminated around 70 probationary employees, including several enforcement division attorneys who were still in their probationary period. The CFPB also canceled more than $100 million in vendor contracts. In addition, the CFPB set up an X account for companies to report CFPB employees who violate the agency's work stoppage orders. On February 11, President Trump nominated Jonathan McKernan to serve as the new Director of the CFPB, subject to confirmation by the Senate.

Bite 1: CFPB Acting Director, Russell Vought, Sued

On February 9, 2025, one day after being named Acting Director, media outlets reported that a union representing CFPB employees sued Russel Vought in two lawsuits. One lawsuit sought to block the DOGE's access to the CFPB's information systems, including those that contain CFPB employee data. The plaintiffs claim that the administration has violated the Privacy Act, which prohibits the CFPB from disclosing employee records, by granting DOGE access "without employee consent." The suit asks a federal court in D.C. to stop the CFPB from granting DOGE access to those records. The second lawsuit claims that it seeks to stop the administration's efforts to defund and shutter the CFPB. The union asked the court to declare "that Defendant Vought's directive to the CFPB's employees to stop their supervision and enforcement work is unlawful" and enjoin "Vought from further attempts to halt the CFPB's supervision and enforcement work."

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